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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Case No. 2:20-mj-00207-VCF

Plaintiff,

Plea Agreement

v.

Michelle Dawn Brooks,

Defendant.

1. Defendant's Guilty Plea.

a. Michelle Dawn Brooks shall plead guilty to **Count One** of the Complaint – *Operating or Being in Actual Physical Control of a Motor Vehicle while Under the Influence of Alcohol*, a violation of 36 C.F.R. § 4.23(a)(1).

b. **Withdrawal of Guilty Plea.** The Defendant will not seek to withdraw her guilty plea after she has entered it in court.

2. Other Charges. The United States Attorney's Office for the District of Nevada ("USAO") will dismiss **Count Two** of the Complaint – *Under the Influence of Alcohol*, a violation of 36 C.F.R. § 2.35(c); and **Count Three** – *Open Container of Alcoholic Beverage*, a violation of 36 C.F.R. § 4.14(b), after sentencing.

3. Facts Supporting Plea Agreement. The Defendant admits and declares under penalty of perjury that the facts set forth below are true and correct:

On or about March 11, 2020 in the State and Federal District of Nevada, within the boundaries of the Lake Mead National Recreation Area, Defendant Michelle Dawn Brooks was seated in the driver's seat of her 2019 black Ford Expedition bearing Nevada registration 639G30s with the engine running and loud music playing while parked at campsite 46 in the Boulder Beach Campground. Rangers approached the vehicle and observed that Defendant was the only occupant, and further, smelled a strong odor of an alcoholic beverage emanated from inside the vehicle and saw an open 375 milliliter bottle of Absolut vodka sitting in the center console cup holder with only about a fifth of its contents remaining. Upon face-to-face contact, the Rangers smelled a strong odor of alcohol emanating from Defendant's breath and that and her eyes appeared watery and bloodshot. Defendant used the vehicle door to steady herself upon exiting the vehicle. Defendant's speech was repetitive and she seemed confused and displayed mood swings, crying, breathing quickly and gasping for air while talking. Defendant stated that she had driven to the campground from Boulder City and only started drinking alcohol once she parked the car. Defendant stated that she was depressed because her husband had left her and that she had been attending Alcoholic Anonymous meetings for the last three days. Defendant refused to perform Standard Field Sobriety Tests, however she provided a breath sample for the portable breath testing unit which showed positive for alcohol.

4. Sentencing.

- a. The maximum penalty for **Count One** of the Complaint – *Operating or Being in Actual Physical Control of a Motor Vehicle while Under the Influence of Alcohol*, a violation of 36 C.F.R. § 4.23(a)(1), is six months of imprisonment, a fine of \$5,000, or both.
- b. The Defendant acknowledges that the district court does not have to follow the recommendation of either party.

1 c. The parties agree to jointly recommend that the Defendant shall be
2 sentenced to unsupervised probation for a period of one year with special conditions, to include
3 that:

4 i. the Defendant pay a \$500 fine and a mandatory \$10 penalty
5 assessment;

6 ii. the Defendant attend and complete the Lower Court Counseling's
7 (1) DUI course and (2) Victim Impact Panel;

8 iii. the Defendant complete 64 hours of community service;

9 iv. the Defendant not return to Lake Mead National Recreation Area
10 for a period of six months;

11 v. the Defendant not violate any local, state, or federal laws.

12 d. Should the Court sentence the Defendant as recommended in Section
13 4(c), the parties agree that if the Defendant successfully completes conditions i, ii, and iii as
14 specified in Section 4(c), within the first six months of her unsupervised probation, and has not
15 entered Lake Mead NRA nor violated any local, state, or federal laws during the first six
16 months of her unsupervised probation, the parties shall jointly move to allow the Defendant to
17 withdraw her guilty plea to Count One, and the Government will move to amend Count One to
18 a charge of Reckless Driving, a violation of 36 CFR § 4.2 and N.R.S. 484B.653. The Defendant
19 will plead guilty to the amended Count One, and the parties will jointly agree that the original
20 sentence be applied to the Reckless Driving conviction. However, if during the first six months
21 of her unsupervised probation the Defendant fails to complete conditions i-iii, as specified in
22 Section 4(c), or enters Lake Mead NRA or violates any local, state, or federal law, then her
23 conviction for Operating a Motor Vehicle while Under the Influence of Alcohol will remain in
24 effect and the Defendant shall not seek to withdraw her guilty plea to Count One.

1 e. Notwithstanding its agreement to recommend a sentence as described
2 above, the USAO reserves its right to defend any lawfully imposed sentence on appeal or in any
3 post-conviction litigation.

4 **5. Waiver of Trial Rights.** The Defendant acknowledges that she has been advised
5 and understands that by entering a plea of guilty she is waiving – that is, giving up – certain
6 rights guaranteed to all defendants by the laws and the Constitution of the United States.
7 Specifically, the Defendant is giving up:

8 a. the right to persist in a plea of not guilty;
9 b. the right to proceed to trial by a federal judge;
10 c. the right to be represented by counsel—and if necessary have the court
11 appoint counsel—at trial. The Defendant understands, however, that, the Defendant retains the
12 right to be represented by counsel—and if necessary have the court appoint counsel—at every
13 other stage of the proceeding;

14 d. the right to be presumed innocent and to have the burden of proof placed
15 on the USAO to prove the Defendant guilty beyond a reasonable doubt;

16 e. the right to confront the witnesses against the Defendant at such a trial
17 and to cross-examine them;

18 f. the right to remain silent at such a trial, with assurance that her silence
19 could not be used against him in any way;

20 g. the right to testify in her own defense at such a trial if she so chooses;

21 h. the right to compel witnesses to appear at such a trial and testify on the
22 Defendant's behalf; and

23 i. the right to pursue any affirmative defenses, Fourth Amendment or Fifth
24 Amendment claims, and any other pretrial motions that have been filed or could be filed.

1 **6. Appellate Waiver.** By entering into this agreement, the Defendant knowingly
2 and expressly waives: (a) the right to appeal the sentence imposed by the Court that is the same
3 or less than what the parties jointly agree to recommend in Section 4 of this agreement; (b) the
4 right to appeal the manner in which the Court determined that sentence on the grounds set forth
5 in 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of the conviction or sentence
6 and any order of restitution or forfeiture. The Defendant also knowingly and expressly waives
7 all collateral challenges, including any claims under 28 U.S.C. § 2255, to her conviction,
8 sentence, and the procedure by which the Court adjudicated guilt and imposed sentence, except
9 non-waivable claims of ineffective assistance of counsel.

10 a. Preservation of Evidence: the Defendant acknowledges that the USAO and the
11 agencies investigating this case are not obligated or required to preserve any evidence obtained
12 in the investigation of this case.

13 **7. Result of withdrawal of guilty plea.** The Defendant agrees that if, after entering
14 a guilty plea pursuant to this agreement, the Defendant seeks to withdraw and succeeds in
15 withdrawing the Defendant's guilty plea on any basis other than a claim and finding that entry
16 into this agreement was involuntary, then (a) the USAO will be relieved of all of its obligations
17 under this agreement and (b) should the USAO choose to pursue any charge that was either
18 dismissed or not filed as a result of this agreement, then (i) any applicable statute of limitations
19 will be tolled between the date of the Defendant's signing of this agreement and the filing
20 commencing any such action; and (ii) the Defendant waives and gives up all defenses based on
21 the statute of limitations or any speedy trial claim with respect to any such action, except to the
22 extent that such defenses existed as of the date of defendant's signing this agreement.

23 **8. Plea agreement part of the guilty plea hearing.** The parties agree that this
24 agreement will be considered part of the record of the Defendant's guilty plea hearing as if the
entire agreement had been read into the record of the proceeding.

1 **9. Removal / Deportation Consequences.** The Defendant understands and
 2 acknowledges that if she is not a United States citizen, then it is possible that she will be
 3 permanently removed (deported) from the United States as a consequence of pleading guilty
 4 under the terms of this agreement. The Defendant has also been advised if her conviction is for
 5 an offense described in 8 U.S.C. § 1101(a)(43), she will be deported and removed from the
 6 United States and will not be allowed to return to the United States at any time in the future.
 7 The Defendant desires to plead guilty regardless of any immigration consequences that may
 8 result from her guilty plea, even if the consequence is automatic removal from the United States
 9 with no possibility of returning. The Defendant acknowledges that she has specifically discussed
 10 these removal / deportation consequences with her attorney.

11 **10. Knowing and voluntary plea.** The Defendant acknowledges that that she has
 12 read this agreement and the Defendant understands its terms and conditions. The Defendant
 13 further acknowledges that she has had (i) adequate time to discuss the terms of this agreement
 14 with her attorney; (ii) has carefully and thoroughly discussed the terms of this agreement with
 15 her attorney; (iii) understands the terms of this agreement and voluntarily agrees to them.

NICHOLAS A. TRUTANICH
 United States Attorney

DATE 6/29/2020

RACHEL L. KENT
 Special Assistant United States Attorney

DATE 5/11/2020

MICHELLE DAWN BROOKS
 Defendant

DATE 5/11/20

DAVID FISCHER, ESQ.
 Counsel for Defendant